

Message Text

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C O N F I D E N T I A L USUN 3500

FROM LOSDEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT, AUGUST 26

1. SUMMARY: INFORMAL PLENARY MET ON DISPUTE SETTLEMENT IN BOTH MORNING AND AFTERNOON SESSIONS. DISCUSSION CENTERED UPON ARTICLE 18(2) (A), (B), AND (C) AND 18(3) OF PART IV OF THE RSNT. ADDITIONAL TOPICS ON COMPLUSORY DISPUTE SETTLEMENT RAISED IN INTERVENTIONS WILL BE REPORTED BELOW. THE TENOR OF THE DEBATE WAS CONCERTED ATTACK ON THESE PROVISIONS OF THE RSNT FROM BOTH PROPONENTS AND OPPONENTS OF COMPLUSORY DISPUTE SETTLEMENT. THE US REPRESENTATIVE WAS THE ONLY ONE TO DEFEND ALL THE PROVISIONS. THERE WAS ONLY LITTLE AND RESTRAINED SUPPORT, ALTHOUGH AUSTRALIA WAS NOTABLE IN ITS DEFENSE OF CDS.

2. ARTICLE 18 (2) GENERALLY SPECIFIES ISSUES ON WHICH CONTRACTING PARTIES MAY, AT THE TIME OF RATIFICATION, CONFIDENTIAL

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INDICATE THEIR INTENTION NOT TO BE BOUND BY DISPUTE SETTLEMENT PROCEDURES WITH RESPECT TO THREE SENSITIVE POLITICAL CATEGORIES OF DISPUTES.

3. ARTICLE 18(2) (A) PROVIDES FOR EXCLUSION FROM COMPULSORY DISPUTE SETTLEMENT OF DISPUTES CONCERNING SEA BOUNDARY DELIMITATIONS, SUBJECT TO A SPECIAL DECLARATION ACCEPTING SOME OTHER METHOD OF BINDING SETTLEMENT. THE USSR, SUPPORTED BY INDIA, KENYA, PAKISTAN, TURKEY, UKRAINIAN SSR, OMMAN, AND VENEZUELA, INSISTED ON DELETING THE PROVISION REQUIRING A SELECTION OF ANOTHER BINDING MEANS OF SETTLEMENT. THEY INSISTED THAT BOUNDARY DISPUTES MUST BE SETTLED THROUGH NEGOTIATIONS AND MEANS CHOSEN BY THE PARTIES, NOT BY IMPOSITION OF THIRD PARTY SETTLEMENT.

4. ON THE OTHER HAND, COLOMBIA AND CYPRUS ARGUED FOR DELETION OF THE WHOLE EXCEPTION, AS BOUNDARY DISPUTES ARE MOST LIKELY TO ENDANGER FRIENDLY RELATIONS AMONG NATIONS AND TO LEAD TO THREATS TO THE PEACE. AFTER RESORTING TO ALL THE ELABORATE PROCEDURES PROVIDED FOR IN PART IV, A COUNTRY WISHING TO SETTLE A BOUNDARY DISPUTE WILL BE FACED AT THE END BY AN EXCEPTION BARRING A BINDING DECISION.

5. OTHERS, WHILE EXPRESSING PREFERENCE FOR DELETION OF 18(2) (A), EMPHASIZED NEED TO CLARIFY THE PROVISION, SWITZERLAND AND GREECE NOTED, IN PARTICULAR, THE POSSIBILITY THAT STATE MAKING THE DECLARATION MAY ARBITRARILY CHOOSE A FORUM NOT ACCEPTABLE TO THEIR POTENTIAL PARTIES TO THE DISPUTE. SWITZERLAND SUGGESTED THAT LAST PHRASE IN PARAGRAPH (A) BE REPLACED BY QUOTE WHICH ALL PARTIES TO THE DISPUTE HAVE ACCEPTED. UNQUOTE. THIS AMENDMENT WAS SUPPORTED BY FRANCE AND IRAQ. AUSTRALIA PROPOSED A VERSION OF (A) AS FOLLOWS QUOTE . . . DISPUTES ARISING OUT OF THE APPLICATION OF ARTICLES 14, 62, AND 71 OF PART II OF THIS CONVENTION, OR THOSE INVOLVING HISTORIC BAYS OR TITLES, PROVIDED THAT THE STATE MAKING SUCH A DECLARATION SHALL INDICATE THEREIN SOME ALTERNATIVE FORM OF JUDICIAL OR ARBITRAL SETTLEMENT TO WHICH ANY OTHER PARTY MAY RESORT. UNQUOTE. THIS PROPOSAL WAS SUPPORTED BY JAPAN AND SIERRA LEONE.

6. PERU OBJECTED TO THE EXPRESSION QUOTE SEA BOUNDARY UNQUOTE CONFIDENTIAL

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AND SUGGESTED REFERRING INSTEAD TO MARITIME AREAS UNDER A STATE'S JURISDICTION OR MORE PRECISELY TO DISPUTES RELATING TO THE BOUNDARIES OF THE TERRITORIAL SEA, THE EXCLUSIVE ECONOMIC ZONE AND THE CONTINENTAL SHELF. END QUOTE THIS PROPOSAL WAS SUPPORTED BY BRAZIL, IRAQ, AND YEMEN.

7. SECTION 2(B) ALLOWS FOR THE POSSIBILITY OF EXCLUSION OF DISPUTES CONCERNING MILITARY ACTIVITIES, THIS BEING UNDERSTOOD TO INCLUDE GOVERNMENT VESSELS AND AIRCRAFT ENGAGED IN NON-COMMERCIAL SERVICE AND FURTHER THAT LAW ENFORCEMENT ACTIVITIES SHALL NOT BE CONSIDERED MILITARY ACTIVITIES. AMONG THE SPEAKERS, SPAIN, SWITZERLAND, PERU, SIERRA LEONE, BAHRAIN, COLOMBO, KENYA, INDIA, AND

OMAN PROPOSED DELETION OF THIS SECTION. ONLY THE UNITED STATES AND THE UKRAINIAN SSR SUPPORTED THE TEXT AS IT STANDS. FRANCE NOTED THAT IT HAD NO OBJECTIONS TO THIS SUBPARA. AUSTRALIA, NEW ZEALAND, BRAZIL, ALGERIA AND VENEZUELA CONSIDERED THAT THE EXCEPTION WAS TOO BROAD, NOT SUFFICIENTLY PRECISE AND SHOULD BE REWORDED.

8. SUBPARA 2(C) PROVIDES AN OPTIONAL EXCEPTION IN THE CASE OF DISPUTES QUOTE IN RESPECT OF WHICH THE SECURITY COUNCIL OF THE UN, WHILE EXERCISING THE FUNCTION ASSIGNED TO IT BY THE CHARTER OF THE UN DETERMINES THAT SPECIFIED PROCEEDINGS UNDER THE PRESENT CONVENTION INTERFERES WITH THE EXERCISE OF SUCH FUNCTIONS IN A PARTICULAR CASE. UNQUOTE AMONG THE DELEGATES SPEAKING TODAY ALGERIA, ECUADOR, VENEZUELA, IRAQ, YEMEN AND COLOMBIA PROPOSED DELETION. SIERRA LEONE, KENYA, JAPAN (WITH SOME REPHRASING) FAVORED ACCEPTANCE OF THE CURRENT DRAFT. THE USSR SUPPORTED BY SWITZERLAND, PERU, UKRAINIAN SSR AND BRAZIL, PROPOSED THAT THIS SECTION BE AMENDED TO ELIMINATE THE REQUIREMENT FOR A DETERMINATION BY THE SECURITY COUNCIL, PREFERRING TO SUBSTITUTE THE WORDS QUOTE IS EXERCISING THE FUNCTIONS ASSIGNED UNQUOTE FOR QUOTE WHILE EXERCISING UNQUOTE THE SOVIET AMENDMENT WOULD STRIKE OUT SECOND HALF OF THAT SECTION BEGINNING WITH THE WORD QUOTE DETERMINES. UNQUOTE THE UNITED STATES NOTED THAT THE SOVIET AMENDMENT PARALLELS THE TEXT OF ARTICLE 12 OF THE UN CHARTER AND SHOULD BE INTERPRETTED IN ACCORDANCE WITH THE PRACTICE UNDER THAT CONFIDENTIAL

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ARTICLE. ALGERIA SUGGESTED ADDITION OF A REFERENCE TO THE SECURITY COUNCIL.

9. PERU SUGGESTED REWORDING OF PARA 2 IN ORDER TO CLARIFY A DISTINCTION BETWEEN RESERVATIONS AND EXCLUSIONS. PARAGRAPH 2 SHOULD BECOME A SEPARATE ARTICLE (NUMBERED TO FOLLOW REST OF SECTION 18). THE REVISED ARTICLE WOULD ALSO INCLUDE PRESENT PARAGRAPHS 4, 5, AND 6. VENEZUELA SUPPORTED THIS PROPOSAL.

10. PARA 18.3 PROVIDES THAT THE TRIBUNAL HAVING JURISDICTION UNDER ARTICLES 9 AND 10 MAY DECIDE THE ISSUE OF THE APPLICABILITY OF THE COASTAL STATE EXCLUSION OR THE SPECIFIED EXEMPTION BY DECLARATION. TURKEY PROPOSED DELETION OF PARA 3, AND WAS SUPPORTED BY BRAZIL. AMONG THE SPEAKERS, THE FOLLOWING STATES FAVORED RETENTION: CANADA AND JAPAN. FOLLOWING THE INTERVENTION BY THE USSR, SEVERAL SPEAKERS PROPOSED THAT THE WORDS QUOTE OR 2 UNQUOTE BE DELETED, THUS MAKING THIS EXCEPTION APPLICABLE ONLY TO PARA 1 ON THE ECONOMIC ZONE EXCEPTION.

11. PERU SUGGESTED THAT PARA 3 BE MADE INTO A SEPARATE

ARTICLE APPLICABLE TO ALL CHALLENGES TO JURISDICTION.
IT WAS SUPPORTED BY BRAZIL AND SWITZERLAND, WHICH PROPOSED
THE FOLLOWING TEXT. QUOTE IN CASE OF A CHALLENGE ON
THE POINT OF DETERMINING WHETHER AN ORGAN PROVIDED UNDER
ARTICLE 9 OR AN ANNEX TO PART IV OF THE PRESENT CONVENTION
IS COMPETENT, THAT ORGAN WILL DECIDE. UNQUOTE. „NEW
ZEALAND AND INDIA SUPPORTED SWISS TEXT.

12. OTHER TOPICS RAISED INCLUDED APPLICATION OF DISPUTE
SETTLEMENT TO CASES RELATING TO FACTS WHICH TOOK PLACE
BEFORE THE CONVENTION COMES INTO FORCE (TURKEY) FURTHER
DISCUSSION ON APPLICABILITY OF CDS TO STRAITS, POSSIBLE
INSERTION OF THE CONCEPTS OF QUOTE EQUITY UNQUOTE AS A CRITERION IN
DISPUTE SETTLEMENT, THE EXEMPTION OF QUOTE HISTORIC BAYS UNQUOTE
FROM CDS AND ELABORATION OF THE MEANING OF QUOTE LAW
ENFORCEMENT UNQUOTE.
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